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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

RIN 0648-AY26

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Atlantic Mackerel, Squid, and Butterfish Fisheries; Amendment 14

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Announcement of availability of fishery management plan amendment; request for comments.

SUMMARY: NMFS announces that the Mid-Atlantic Fishery Management Council (Council) has submitted Amendment 14 to the Atlantic Mackerel, Squid, and Butterfish Fishery Management Plan (Amendment 14), incorporating the Final Environmental Impact Statement (FEIS) and the Initial Regulatory Flexibility Analysis (IRFA), for review by the Secretary of Commerce, and is requesting comments from the public.

DATES: Comments must be received on or before [insert date 60 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: The Council prepared an FEIS for Amendment 14 that describes the proposed action and other considered alternatives and provides a thorough analysis of the impacts of the proposed measures and alternatives. Copies of Amendment 14, including the FEIS, the

Regulatory Impact Review (RIR), and the Initial Regulatory Flexibility Analysis (IRFA), are available from: Christopher Moore, Executive Director, Mid-Atlantic Fishery Management Council, Suite 201, 800 State Street, Dover, DE 19901. The FEIS/RIR/IRFA is accessible via the Internet at <http://www.nero.nmfs.gov>.

You may submit comments on this document, identified by NOAA-NMFS-2013-0128, by any of the following methods:

- Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to [www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2013-0128](http://www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2013-0128), click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.
- Mail: John K. Bullard, Regional Administrator, NMFS, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope, “Comments on MSB Amendment 14 NOA.”
- Fax: (978) 281-9135, Attn: Aja Szumylo.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on [www.regulations.gov](http://www.regulations.gov) without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF formats only.

FOR FURTHER INFORMATION CONTACT: Aja Szumylo, Fishery Policy Analyst, 978-281-9195; fax 978-281-9135.

#### SUPPLEMENTARY INFORMATION:

##### Background

The goals of Amendment 14 are to: Implement an effective program for monitoring river herring and shad incidental catch and bycatch in the MSB fisheries; and reduce the incidental catch and bycatch of river herring and shad in the MSB fisheries. The Council initially notified the public of its intent to consider the impacts of alternatives for addressing river herring and shad interactions with the Atlantic Mackerel, Squid, and Butterfish (MSB) fisheries, as well as catch shares to limit harvesting capacity in the Illex and longfin squid fisheries, in a Notice of Intent to Prepare an Environmental Impact Statement (EIS) for Amendment 14 on June 9, 2010 (75 FR 32745). Based on written comments and comments received during scoping meetings held in June 2010, the Council decided to proceed with the analysis for Amendment 14 without including consideration of catch shares in the squid fisheries.

The Council conducted public hearings for Amendment 14 in April and May of 2012. Following the public comment period on the Amendment 14 DEIS that ended on June 4, 2012, the Council adopted Amendment 14 on June 14, 2012. The Council submitted Amendment 14 to NMFS for review on February 26, 2013. After making necessary revisions, the Council submitted Amendment 14 on June 3, 2013. In Amendment 14, measures recommended by the Council would:

- Require weekly vessel trip reports (VTRs) for all MSB permits, consistent with VTR provisions for other fisheries;

- Require a 48-hr pre-trip notification in order to retain, possess, or transfer more than 20,000 lb (9.07 mt) of Atlantic mackerel (mackerel) in order to facilitate observer placement;
- Require the use of vessel monitoring systems (VMS), as well as the submission of daily VMS catch reports, for limited access mackerel and longfin squid/butterfish moratorium permits to facilitate quota monitoring;
- Require a 6-hr pre-landing notification via VMS in order to land more than 20,000 lb (9.07 mt) of mackerel, to facilitate enforcement;
- Expand dealer reporting requirements;
- Increase observer coverage on limited access mackerel vessels using midwater and small-mesh bottom trawl, and require industry contributions of \$325 per day;
- Expand vessel requirements related to at-sea observer sampling to help ensure safe sampling and improve data quality;
- Establish measures to minimize the discarding of catch before it has been made available for sampling;
- Require that the Council meet formally to review the results of the Sustainable Fisheries Coalition/University of Massachusetts Dartmouth School of Marine Science and Technology river herring and shad bycatch avoidance project, and consider the appropriateness of developing a framework adjustment to implement the catch avoidance strategies suggested in the study;
- Establish a mortality cap for river herring and shad to directly control mortality in the mackerel fishery, with caps amounts set during specifications; and

- Add river herring and shad mortality caps and time/area hotspot closures to the list of measures that can be addressed via framework adjustment.

The geographic range and vessel participation in the mackerel fishery overlap with the Atlantic herring fishery to a large extent. Some of the management measures in Amendment 14 are the same or similar to those in the New England Fishery Management Council's (NEFMC) Amendment 5 to the Atlantic Herring FMP (Amendment 5), which was partially approved by NMFS on July 18, 2013. A Notice of Availability soliciting public comments on Amendment 5 was published on April 22, 2013 (77 FR 23733), with a comment period ending June 21, 2013. The proposed rule to implement Amendment 5 (78 FR 33020) was published on June 3, 2013, with a comment period ending July 18, 2013.

The disapproved measures in Amendment 5 lacked adequate rationale or development by the NEFMC, and included the following: A dealer reporting requirement; a cap that, if achieved, would require vessels discarding catch before it had been sampled by observers (known as slippage) to return to port; and a requirement for 100-percent observer coverage on Category A and B vessels, coupled with a limited industry contribution of \$325 per day toward observer costs. A summary of the comments received, and NMFS's responses to those comments, will be published in the final rule implementing Amendment 5. NMFS's concerns with similar measures in Amendment 14 will be outlined in the Amendment 14 proposed rule.

Amendment 5 contained a requirement that herring dealers must accurately weigh all fish and, if catch is not sorted by species, dealers would be required to document how they estimated relative species composition. The same requirement is proposed in Amendment 14 for MSB dealers for transactions with greater than 20,000 lb (9.07 mt) mackerel, or greater than 2,500 lb

(1.13 mt) longfin squid. Dealers currently report the weight of fish, obtained by scale weights and/or volumetric estimates. Because this measure does not specify the methods dealers must use to determine weight and allows volumetric estimates, it is not expected to change dealer behavior and, therefore, is not expected to improve the accuracy of catch weights reported by dealers. Additionally, a qualitative description of how relative species composition is estimated cannot be incorporated into catch monitoring because we must use the weights reported by the dealers, regardless of the methods used to determine weights. Without standards for estimating species composition, we would be unable to evaluate the sufficiency of the information submitted. If this measure was a requirement, and dealers did not document how they estimated relative species composition, it would become a compliance issue and could affect future permit issuance. NMFS disapproved this measure in Amendment 5 because we believe that it does not comply with National Standard 7's requirement to minimize costs and avoid unnecessary duplication, and the Paperwork Reduction Act's requirement for the utility of the measure to outweigh the additional reporting and administrative burden on the dealers.

Amendment 5 contained a measure that would require limited access herring permit holders to bring all catch aboard the vessel and make it available for sampling by an observer. If catch is discarded before it has been made available to the observer, that catch is considered slippage. Amendment 5 would allow catch to be slipped only if: (1) Bringing catch aboard compromises the safety of the vessel, (2) mechanical failure prevents the catch from being brought aboard, or (3) spiny dogfish prevents the catch from being pumped aboard. But if catch is slipped, the vessel operator would be required to complete a released catch affidavit detailing why catch was slipped and the estimated amount of slipped catch. Additionally, once there have

been 10 slippage events in a herring management area by vessels using a particular gear type (including midwater trawl, bottom trawl, and purse seine) and carrying an observer, vessels that subsequently slip catch in that management area, using that particular gear type and carrying an observer, would be required to return to port. Amendment 14 would prohibit slipped catch on limited access mackerel and longfin squid/butterfish moratorium trips with an observer aboard, with the same exemptions that were proposed in Amendment 5, would require a released catch affidavit to document slippage events, and would require trip termination after 10 slippage events for the entire mackerel fleet (no trip termination requirement would apply for longfin squid).

NMFS did approve the prohibition on slippage and the released catch affidavit requirement in Herring Amendment 5. However, we were concerned about the rationale for, and legality of, the slippage caps in Amendment 5, and ultimately chose to disapprove that aspect of the measure. The threshold for triggering a slippage cap (10 slippage events by area and gear type) does not have a strong supporting analysis in the EIS for Amendment 5. Once a slippage cap has been met, vessels that slip catch, even if the reason for slipping was safety or mechanical failure, would be required to return to port. This aspect of the measure has the characteristic of a sanction, inconsistently applied. Vessels may continue fishing following slippage events 1 through 10, but must return to port following the 11th slippage event, regardless of the vessel's role in the first 10 slippage events. Additionally, this measure may result in a vessel operator having to choose between trip termination and bringing catch aboard, despite a safety concern. For these reasons, NMFS determined that the slippage caps in Herring Amendment 5 were inconsistent with the Administrative Procedure Act and National Standards 2 and 10, and had to

be disapproved. While Amendment 14 does not count exempted slippage events towards the slippage cap on the mackerel fishery, NMFS remains concerned about the rationale for the cap trigger, and the legality of requiring a vessel to return to port regardless of the vessel's role in the first 10 slippage events.

Finally, Amendment 5 contained a measure that would have required 100-percent observer coverage on Category A and B herring vessels. The 100-percent observer requirement was coupled with a target maximum industry contribution of \$325 per day. The at-sea costs associated with an observer in the herring fishery are higher than \$325 per day. The Department of Commerce (DOC) Office of General Counsel has advised that such cost-sharing would violate the Anti-Deficiency Act. Based on DOC's advice, there is no current legal mechanism to allow cost-sharing of at-sea costs between NMFS and the industry. Budget uncertainties prevent NMFS from being able to commit to paying for increased observer coverage in the herring fishery. Requiring 100-percent observer coverage would amount to an unfunded mandate. Because Amendment 5 does not identify a funding source to cover all of the increased costs of observer coverage, the measure was not sufficiently developed and was disapproved. NMFS has similar concerns about the proposed measure for increased observer coverage and industry contribution in Amendment 14.

NMFS is soliciting public comments on Amendment 14 and its incorporated documents through the end of the comment period stated in the DATES section of this NOA. Separate from this NOA, a proposed rule including regulations for implementing Amendment 14 will be published in the Federal Register for public comment, following NMFS's further evaluation under Magnuson-Stevens Act procedures. The public comment period for the proposed rule may



close after the public comment period for this NOA has closed. In addition, a Final Environmental Impact Statement (FEIS), required under the National Environmental Policy Act (NEPA), supports Amendment 14, and NMFS has announced the availability of the FEIS for public review for 30 days, with comments due on September 14, 2013. Although NMFS has published three documents soliciting public comment, interested public need only comment once to be considered in NMFS's decision to approve, partially approve, or disapprove Amendment 14.

The timing of comments, given the different dates in the three notices, is important. In order to be considered in NMFS's decision to approve, partially approve, or disapprove Amendment 14, public comments must be received by NMFS on or before the last day of the comment period provided in this NOA (see DATES). Comments received after that date will not be considered for the decision on Amendment 14, including comments postmarked or otherwise transmitted, but not received by NMFS on or before the closing date specified in the DATES section of this NOA. NMFS will consider all comments received by the end of the comment period on the NOA of Amendment 14, whether specifically directed to Amendment 14, the proposed rule, or the FEIS, in its decision to approve, partially approve, or disapprove Amendment 14.

Authority: 16 U.S.C. 1801 et seq.

Dated: August 7, 2013.

Emily H. Menashes,

Deputy Director,

Office of Sustainable Fisheries,

National Marine Fisheries Service.

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